

# **EXHIBIT A**

ATTORNEYS EYES ONLY

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1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4 \* \* \*

5 JAMES HAYDEN,

6 Plaintiff,

7 vs.

CASE NO. 1:17-cv-02635-CAB

8 2K GAMES, INC., et al.,

9 Defendants.

10 \* \* \*

11 Deposition of NINA JABLONSKI,

12 Witness herein, called by the Plaintiff for

13 cross-examination pursuant to the Rules of Civil

14 Procedure, taken before me remotely, Stacey M.

15 Mortsof, RPR, CRR, a Notary Public in and for the

16 State of Ohio, in State College, Pennsylvania, on

17 Wednesday, August 18, 2021, at 9:54 a.m.

18 \* \* \*

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1           Q.     Okay. You said you reviewed your  
2 professional background in tattoos, and you've  
3 noted that that's copious. What did you review  
4 exactly?

5           A.     I reviewed my own background in  
6 the study of skin, which is extensive, and my  
7 study of tattoos as part of the study of skin  
8 in human evolution.

9           Q.     What do you mean by you reviewed  
10 your background?

11          A.     I reviewed my own history, when I  
12 started studying skin, when I started studying  
13 tattoos, and basically just refreshed my own  
14 history.

15          Q.     Does that mean you looked at your  
16 CV to assess when you began your study in skin?

17          A.     I consulted my CV only to look for  
18 specific dates; for instance, when I had given  
19 interviews about tattoos.

20          Q.     So you've given interviews about  
21 tattoos in your past?

22          A.     Yes, I have.

23          Q.     About how many?

24          A.     Two of them are available widely  
25 on the Internet, but I have given others, and I

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1     can't remember exactly how many I have given.  
2     Many.

3             Q.     When you say -- when you say you  
4     gave interviews, does that mean somebody  
5     interviewed you?

6             A.     That is correct.

7             Q.     And are those interviews listed in  
8     your expert report?

9             A.     One of them is listed. Another of  
10    the internet reports is not listed. I noted  
11    that that was actually absent. And then many  
12    of the other interviews are not listed because  
13    they were casual interviews given as part of  
14    podcasts over the years.

15            Q.     Can you describe the interview  
16    that you said that's not listed in a way that  
17    would help me find it if I looked on the  
18    Internet?

19            A.     Yes. It is a BBC interview from  
20    2013. It's called The Rise of the Text Tattoo.

21            Q.     Okay. And then you said you've  
22    given podcasts? Let me rephrase that. You  
23    said you've been interviewed on podcasts in the  
24    past, is that right?

25            A.     Yes.

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1 and evolutionary is used in a very broad context  
2 indeed.

3 BY MR. ALEXANDER:

4 Q. What are some other aspects of  
5 evolution besides -- strike that. What other  
6 aspects about evolution have you studied  
7 besides the evolution of markings placed on  
8 human skin?

9 MS. CENDALI: Objection to form.  
10 Overbroad. You can answer.

11 THE WITNESS: I've studied the  
12 evolution of primate and human skeletons and  
13 muscles and movement and feeding and skin as a  
14 biological organ; for instance, how skin with hair  
15 or without hair actually works. I've studied the  
16 evolution of skin as a sweating organ. So  
17 evolution is extremely broad here, and I've  
18 studied many aspects of primate and human bodies,  
19 including the cultural aspects that pertain to  
20 human life and to their evolution.

21 BY MR. ALEXANDER:

22 Q. Why don't you list anything about  
23 tattoos in your major research interests?

24 MS. CENDALI: Objection.  
25 Mischaracterizes her CV. Assumes facts not in

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1 evidence. Form.

2 THE WITNESS: Because the evolution  
3 of human skin, skin pigmentation, and touch  
4 includes all of human skin as a canvas for social  
5 communication. This really -- this is a very  
6 major topic, and everything about the evolution of  
7 skin involves social communication, including  
8 tattoos.

9 BY MR. ALEXANDER:

10 Q. It includes a lot of other things,  
11 too, though, right?

12 MS. CENDALI: Objection. Overbroad.  
13 Form.

14 THE WITNESS: It includes other  
15 things, but it's very important to note that  
16 tattoos are the most salient form of human body  
17 decoration because they are permanent. So I have  
18 great interest in tattoos because people invest  
19 heavily in them.

20 BY MR. ALEXANDER:

21 Q. Would you be surprised to know  
22 that you only list the word tattoo twice in  
23 your 48-page CV?

24 MS. CENDALI: Objection to form. You  
25 may answer.

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1           A.     My name is Nina Jablonski.   Are  
2     you seeking my home address?

3           Q.     Yes, please.

4           A.     I reside at 432 West Shadow Lane,  
5     State College, Pennsylvania.

6           Q.     And is that where your at today  
7     for this deposition?

8           A.     That is where I am at today.

9           Q.     Is there anybody else with you in  
10    the room where you're at?

11          A.     No, there is not.

12          Q.     Okay.   So other than the  
13    conversation that we've talked about today  
14    related to your visits to tattoo shops, have  
15    you interviewed any other tattoo artists?

16          A.     I've interviewed and talked to  
17    tattoo artists casually in various contexts all  
18    over the place because some of them have taken  
19    my classes.   Some of them have called me up.  
20    So there have been many different  
21    conversations, not always, you know, in a  
22    tattoo shop but that have been held in various  
23    places and also with tattooed people too  
24    numerous to mention.

25          Q.     In the context of your research

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1 related to tattoos -- strike that. In the  
2 context of your academic research related to  
3 the subject matter about tattoos, have you  
4 interviewed any tattoo artists?

5 MS. CENDALI: Objection. Asked and  
6 answered. Form. You may answer.

7 THE WITNESS: Yes. The ones that I  
8 referred to earlier and, you know, broadly when I  
9 meet anyone who has -- who has had a tattoo or who  
10 is a tattooist, I talk to them about what they're  
11 doing, why they're doing it, and what their  
12 motivations are and what their expectations are.  
13 So I take the opportunities all the time, and  
14 they're not necessarily planned.

15 BY MR. ALEXANDER:

16 Q. Okay. Can you estimate how  
17 many -- strike that. So setting aside the  
18 conversations you've had with the tattoo  
19 artists in the tattoo shops you've visited, can  
20 you estimate how many of these casual  
21 interviews you've had with tattoo artists?

22 MS. CENDALI: Objection.  
23 Characterization of casual. Form. Asked and  
24 answered -- well, not asked and answered. You may  
25 answer.



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1                   THE WITNESS: I would say dozens of  
2                   conversations that I've had with tattoo artists in  
3                   various contexts.

4                   BY MR. ALEXANDER:

5                   Q.     Were any of these conversations  
6                   more than ten minutes?

7                   A.     Yes. Yes, they were.

8                   Q.     Any more than 20 minutes?

9                   A.     That is -- that's difficult for me  
10                  to recall, but, yes, a few of these were quite  
11                  long, especially when the tattoo artists were  
12                  my students.

13                  Q.     Okay. When you say quite long,  
14                  what do you mean by that?

15                  A.     Like the better part of an hour.

16                  Q.     Okay. Can you name one individual  
17                  that you had one of these longer conversations  
18                  with?

19                  A.     I cannot recall the name.  
20                  These -- this was -- there were actually a few  
21                  students who have taken the class that I offer  
22                  on skin at Penn State who have been tattoo  
23                  artists, and I've spoken to each of them at  
24                  length.

25                  Q.     And how many of them is that?

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1 asking his permission?

2 A. That is correct. I do not know.

3 Q. And you don't know how common it  
4 was for media companies to contact Mr. Hayden  
5 and ask permission to display tattoos he's  
6 inked, right?

7 MS. CENDALI: Objection. Overbroad.  
8 Mischaracterizes her testimony. Assumes facts not  
9 in evidence. Form.

10 THE WITNESS: Yes. I do not know how  
11 often Mr. Hayden is contacted, but based on the  
12 declarations of other tattooists, they are not  
13 interested in having fees for images of their  
14 tattoos paid to them. They want their tattoos to  
15 be freely visible when a tattooed individual is  
16 photographed or appears on television or is  
17 viewable on the street or in a sports arena or in  
18 a video game because that's how they get -- that's  
19 how the tattooist gains popularity and further  
20 remuneration themselves.

21 BY MR. ALEXANDER:

22 Q. If people respected their  
23 copyrights on -- in the tattoos, wouldn't they  
24 get remuneration in that respect?

25 MS. CENDALI: Objection. Calls for a

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1 legal conclusion. Form. Foundation. Tone. You  
2 may answer.

3 THE WITNESS: It would create such an  
4 unwieldy and awkward precedent because often  
5 people have multiple tattoos or tattoos that were  
6 inked by multiple individuals who sort of added to  
7 images. So, for instance, what happens if a  
8 tattoo is only partly covered by one individual  
9 and one individual has asked to license that part  
10 of a tattoo? This quickly becomes a wieldy absurd  
11 and obstructive practice that would be incredibly  
12 inhibitory to a tattooist's business and would  
13 prevent people, regular people, from seeking to  
14 get tattoos if they had to worry about how their  
15 images were going to be reproduced and if they had  
16 to seek permission from one part of a tattoo from  
17 one person and another part from one person. They  
18 would quickly be entirely discouraged from getting  
19 a tattoo at all.

20 BY MR. ALEXANDER:

21 Q. Do you have any idea if Samsung  
22 has ever contacted any other tattoo artists to  
23 seek permission to display their tattoos in a  
24 commercial?

25 MS. CENDALI: Objection. Overbroad.

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1 Foundation.

2 THE WITNESS: I am unaware if Samsung  
3 has done this.

4 BY MR. ALEXANDER:

5 Q. Are you aware of whether any media  
6 company is -- well, strike that. Do you have  
7 any idea of whether any other media companies  
8 have ever contacted any tattoo artists other  
9 than Mr. Hayden to seek permission to show  
10 their tattoos?

11 MS. CENDALI: Objection. Outside the  
12 scope of her report about video games. Overbroad.

13 THE WITNESS: I am not aware that any  
14 such representations have been made to other  
15 tattooists.

16 BY MR. ALEXANDER:

17 Q. And you haven't inquired into  
18 that, have you? You haven't researched that,  
19 right?

20 MS. CENDALI: Objection. Overbroad.  
21 Outside the scope of her expert report.

22 THE WITNESS: I have not investigated  
23 this because it is completely outside the bounds  
24 of common expected practice, as I have stated  
25 earlier.

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1 BY MR. ALEXANDER:

2 Q. But it exists? I mean, you can't  
3 deny that, right?

4 MS. CENDALI: Objection. Assumes  
5 facts not in evidence. Foundation. Irrelevant to  
6 video games. Form.

7 THE WITNESS: The existence of one  
8 document by one tattooist does not indicate  
9 anything of significance in this -- in this broad  
10 category of phenomena that we are discussing.

11 BY MR. ALEXANDER:

12 Q. You admit in your report you've  
13 reviewed several documents that show that  
14 plaintiff has entered into releases related to  
15 tattoos, right?

16 MS. CENDALI: What are you talking  
17 about? Do you have some page that we should be  
18 looking at?

19 MR. ALEXANDER: Footnote 50.

20 MS. CENDALI: 50 or 51?

21 MR. ALEXANDER: No. Five zero.

22 MS. CENDALI: Is there a question?

23 I'm sorry.

24 BY MR. ALEXANDER:

25 Q. You admit in your report that

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1     you've reviewed several documents that show  
2     that plaintiff has entered into releases  
3     related to tattoos, right?

4             A.     I have reviewed these releases,  
5     yes.

6             Q.     And is your -- you know, as an  
7     expert in the evolution of things and as an  
8     anthropologist, wouldn't you agree that as  
9     technology changes, sometimes customs and norms  
10    also change?

11            MS. CENDALI:  Objection.  Foundation.  
12    Overbroad.  Confusion.  Incomplete hypothetical.  
13    You may answer.

14            THE WITNESS:  Culture changes  
15    rapidly, but expectations like this on the part of  
16    tattooists and tattooed people have been part of  
17    human culture for centuries, and it is extremely  
18    unlikely that this particular understanding would  
19    change because it would cause such a rupture in  
20    the industry, such a sudden and irreparable change  
21    in expectations on the part of what a tattooist  
22    requests and expects and on the part of a person  
23    seeking to get tattooed.

24            If permission had to be sought for a  
25    prospective client to get permission of a

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1 tattooist to appear in various video portrayals of  
2 themselves, they would no doubt object because  
3 this would place undue limitations on them and, as  
4 I indicated a few minutes ago, it is extremely  
5 common for people to have multiple tattoos or  
6 composite tattoos that were created by several  
7 individuals. So the idea that a tattooed person  
8 would have to somehow keep straight all of these  
9 permissions and tattooists would have to keep  
10 straight all of these releases or licenses would  
11 bring the entire industry to a grinding halt.

12 MR. ALEXANDER: Move to strike as  
13 nonresponsive.

14 BY MR. ALEXANDER:

15 Q. Are you assuming as a basis for  
16 your opinion in your report that Mr. Hayden is  
17 asserting his copyrights against LeBron James,  
18 Danny Green, or Tristan Thompson?

19 MS. CENDALI: Objection. Calls for  
20 legal conclusion. Incomplete hypothetical. Form.

21 THE WITNESS: Mr. Hayden is taking an  
22 action against Take-Two Interactive as the  
23 creators of NBA 2K. He has not taken an action  
24 against the tattooed individuals.

25 BY MR. ALEXANDER:

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1     these images of tattoos are being conceived of by  
2     people as art.

3     BY MR. ALEXANDER:

4             Q.     Do you mean is she interested in  
5     the tattoos as being conceived of as art or the  
6     images of tattoos being conceived of as art?

7             MS. CENDALI:   Objection to form.  
8     Compound.   Confusing.   You can answer.

9             THE WITNESS:   She is researching how  
10    tattoos are depicted as art, how the process of  
11    tattooing is depicted as art.   She's interested in  
12    all aspects of the tattoo process, including the  
13    creation of tattoos in artistic depictions.

14    BY MR. ALEXANDER:

15            Q.     Have you talked to her at all  
16    about copyright?

17            MS. CENDALI:   Objection.   Outside the  
18    scope.   You can answer.

19            THE WITNESS:   I have spoken to her  
20    about copyright.

21    BY MR. ALEXANDER:

22            Q.     What did you talk to her about?

23            A.     I talked to her about how common  
24    is it for tattooists to seek to copyright their  
25    tattoos.



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1 Q. And what did she say?

2 A. She said it's not common at all.  
3 She had never -- she had never encountered this  
4 in any of the many tattooists that she had  
5 worked with or interviewed in the course of her  
6 dissertation research.

7 Q. Was copyright law a primary  
8 subject matter of her research?

9 MS. CENDALI: Objection to form. You  
10 can answer.

11 THE WITNESS: Copyright law was not  
12 an object of her study.

13 BY MR. ALEXANDER:

14 Q. How many tattoo artists did she  
15 tell you she interviewed on the topic of  
16 copyrighting the artist's tattoos?

17 MS. CENDALI: Objection to form. You  
18 may answer.

19 THE WITNESS: I cannot recall how  
20 many copied -- how many artists, tattooists, that  
21 she spoke to in this connection. I know it was  
22 more than two or three. She has done research  
23 with many tattooists and with some of them she has  
24 discussed this subject, but I don't know the  
25 number.